

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

JULIE A. HARRISON, ANTELOPE)	
COUNTY ASSESSOR,)	
)	Case No. 07R-001
Appellant,)	
)	DECISION AND ORDER
v.)	REVERSING
)	THE DECISION OF THE
ANTELOPE COUNTY BOARD OF)	ANTELOPE COUNTY
EQUALIZATION)	BOARD OF EQUALIZATION
)	
and)	
)	
BARDEENE GLANDT, TRUSTEE,)	
GLANDT REVOCABLE LIVING TRUST,)	
)	
Appellees.)	

The above-captioned case was called for a hearing on the merits of an appeal by Julie A. Harrison, Antelope County Assessor, ("the County Assessor") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S. 20th St., Norfolk, Nebraska, on August 6, 2008, pursuant to an Order for Hearing and Notice of Hearing issued May 29, 2008. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §11 (10/07).

Julie A. Harrison, Antelope County Assessor, was present at the hearing without legal counsel.

Michael L Long, County Attorney for Antelope County, Nebraska, was present as legal counsel for the Antelope County Board of Equalization ("the County Board").

Bardeene Glandt, Trustee, Glandt Revocable Living Trust ("the Taxpayer") was present.

David E. Copple was present as legal counsel for Bardeene Glandt, Trustee, Glandt Revocable Living Trust.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006). The final decision and order of the Commission in this case is as follows.

I. ISSUES

The County Assessor has asserted that actual value of the subject property as of January 1, 2007, is greater than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2007.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. The County Assessor is authorized by law to appeal decisions of the County Board of Equalization. *Phelps County Board of Equalization v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

2. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to be an Appellee.
3. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
4. Actual value of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Antelope County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: Lots 7 - 9 & West 3' of a vacated alley, Block 194, Neligh, Antelope County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$3,290.00	\$3,290.00	\$3,290.00
Improvement	\$158,970.00	\$121,600.00	\$141,180.00
Total	\$162,260.00	\$124,890.00	\$144,470.00

5. An appeal of the County Board's decision was filed with the Commission.
6. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
7. Bardeene Glandt, Trustee, Glandt Revocable Living Trust was served with a Notice in Lieu of Summons and duly answered that Notice.
8. An Order for Hearing and Notice of Hearing issued on May 29, 2008, set a hearing of the appeal for August 6, 2008, at 12:00 p.m. CDST.

9. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
10. Actual value of the subject property as of the assessment date for the tax year 2007 is:

Case No. 07R-001

Land value \$ 3,290.00

Improvement value \$158,970.00

Total value \$162,260.00.

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Supp. 2007).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

4. “Actual value, market value, and fair market value mean exactly the same thing.”
Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
8. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).

11. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
13. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
14. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
15. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
16. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon

property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

18. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized values); and *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property is an improved residential parcel. The residence on the parcel was constructed in 1965. (E2:4). An addition was added to the residence around 1992. (E2:22).

The residence is one story with 2,172 square feet on the first floor. (E2:4). The County Assessor's records show that the residence has a 1,080 square foot basement with 940 square feet of recreational finish. (E2:4). An appraiser for the Taxpayer found 1,036 square feet of basement with 87% ($1036 \times .87 = 901$) finish of some grade. (E2:17).

The term quality was used frequently in the testimony and exhibits. In the context of a building's description quality refers to the character of construction and the materials used in the original work. *Appraising Residential Properties*, 3rd Edition, Appraisal Institute, (1999), p.119. "Residences of Good Quality may be mass produced in above-average residential developments or built for an individual owner. Good-quality standard material are used throughout. These houses generally exceed the minimum construction requirements of lending institutions,

mortgage-insuring agencies and building codes. Some attention is given to architectural design in both refinements and detail. Interiors are well finished, usually having some good-quality wallpaper or wood paneling. Exteriors have good fenestration with ornamental materials or other refinements.” *Marshall & Swift Residential Cost Handbook*, Marshall & Swift/ Boeckh, LLC, (3/2005), p. Good-1. “Residences of Average Quality typically will be encountered more frequently than residences of other qualities. They are usually mass produced and will meet or exceed the minimum construction requirements of lending institutions, mortgage insuring agencies, and building codes. By most standards, the quality of material and workmanship is acceptable but does not reflect custom craftsmanship. Cabinets, doors, hardware and plumbing are usually stock items. Architectural design will include ample fenestration and some ornamentation on the front elevation.” *Marshall & Swift Residential Cost Handbook*, Marshall & Swift/ Boeckh, LLC, (6/2005), p. Avg -1. Fenestration generally refers to the arrangement of windows and doors in the walls of a building. *Marshall & Swift Residential Cost Handbook*, Marshall & Swift/ Boeckh, LLC, (3/2003), p. G-18.

Condition is a term that was also used frequently in the hearing. Condition refers to the physical state after construction of an improvement and requires an evaluation of items in need of immediate repair, those items that may be repaired or replaced at a later time and those items that will last the full economic life of the improvement. *The Appraisal of Real Estate*, 12th Edition, Appraisal Institute, 2001, pg. 265.

The Commission has used the descriptions and definitions just stated as reference points for evaluation of the evidence presented to it. It is apparent from the descriptions of good and average quality that the ratings are subjective in several respects.

A quality rating has two functions in the cost approach; first, to place the residence in a classification with like homes and second, referencing of the appropriate cost table because good quality homes have generally higher construction costs than average quality homes. Within the sales comparison approach the function is to show that the quality of two residences are similar or require adjustment for differences.

The County Board determined that the quality rating of the residence should be average rather than good as rated by the County Assessor. An Appraiser for the Taxpayer also rated quality of the residence as average. (E2:17). The County Board also determined that actual value of the subject property for the tax year 2007 should be equal to its actual value for the tax year 2006. Actual value for the tax year 2006 was \$144,470.00. (E2:3). The County Assessor testified that actual value as indicated using the cost approach with a change of quality from good to average did not equal actual value as determined by the County Board. The County Assessor testified that an additional adjustment was necessary. The adjustment made by the County Assessor was to physical depreciation. Physical depreciation was reduced from 28% as shown on page 4 of Exhibit 2 to 18% as shown on page 33 of Exhibit 2. The other numbers shown on pages 2 and 33 of Exhibit 2 also changed but all are the result of changes to the two factors of condition and physical depreciation. The objective of changes to the factors was a calculation of value equal to actual value as determined for the prior year. A prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 428 N.W.2d 201 (1988). The County Board's determination that the quality of the residence on the subject property was average rather than good was not arbitrary or unreasonable to the extent that

determination is supported by the opinion of an appraiser appearing on behalf of the Taxpayer. The County Board did more however, when it determined that the change in quality warranted a return to the prior year's value. There is no evidence showing the adjustment to actual value that is appropriate for a change in quality from good to average for the residence on the subject property. The County Board's determination of actual value was arbitrary or unreasonable.

A calculation based on the cost approach as shown in Exhibit 2 at page 4 results in an amount equal to the County Assessor's determination of actual value. The County Assessor testified that her opinion of actual value for the subject property was based on an examination of sales and her opinion was that one story residences of good quality and condition built between 1960 and 1979 should be valued at \$65.00 per square foot. The County Assessor also testified that residential parcels similar to the subject property were valued on that basis. Examples of those valuations were presented in Exhibit 2 at page 6. No information concerning the sales relied on by the County Assessor are in evidence.

An appraiser appeared on behalf of the Taxpayer and offered an opinion that as of June 9, 2007, actual value of the subject property was \$130,000.00. Exhibit 7 is a written report supporting the appraiser's opinion of actual value. The Taxpayer's appraiser developed estimates of actual value for the subject property using the sales comparison approach and the cost approach. (E7:4). The opinion of actual value stated by the Taxpayer's appraiser was actual value as indicated by use of the sales comparison approach. The County Assessor testified that use of the sales comparison approach as shown in Exhibit 7 was incorrect in several respects. The subject property is in the City of Neligh. The County Assessor testified that use of Comparable 3 was not appropriate because the parcel was located in the City of Elgin and that

Elgin was a different market than Neligh. The Taxpayer's appraiser noted his belief that Elgin's market was comparable to the market in Neligh. (E7:4). The Taxpayer's appraiser did make a site adjustment of \$1,500. The site adjustment may be related to the relative sizes of two parcels. The County Assessor testified that the sale of Comparable 2 was not an arm's length transaction. The County Assessor also testified that her determination that the sale of Comparable 2 was not an arm's length transaction had been supported by the real estate broker who participated in the transaction.

The County Assessor testified that Comparable 1 should have been adjusted for its site because it was on a gravel road and the subject property was on a paved street. An adjustment had been made to Comparable 2 by the Taxpayer's appraiser because it was not on a paved street. (E7:4). There is further concern reason to believe that a site adjustment that might have been made to Comparable 1. The Taxpayer's appraiser indicated that the size of the subject property lot was 19,440 square feet. (E7:4). The dimensions of the subject property lot as shown in the County Assessor's records are 144 x 135. Those dimensions support a determination that the size of the land component of the subject property is 19,440 square feet ($144 \times 135 = 19,440$). E2:4). The County Assessor's records for Comparable 2 show the dimensions of the lot are 149 x 168. (E2:35). Those dimensions support a determination that the size of the land component of Comparable 2 is 25,032 square feet ($149 \times 168 = 25,032$). The difference in size is 5,592 square feet ($25,032 - 19,440 = 5,592$). Expressed another way the land component of Comparable 2 is 28.7% larger than the land component of the subject property ($5,592 \div 19,440 = .287$). The description of the land component of Comparable 1 by the Taxpayer's appraiser is misleading. The description of Comparable 1 by the Taxpayer's appraiser has other differences

with the County Assessor's records, such as the size of the basement and the square feet of the basement that are finished.

The Taxpayer's appraiser rated the quality of construction for the subject property as average and rated condition of the subject property as average as well. (E7:4). The Taxpayer's appraiser testified that the quality rating of an improvement could change due to age of the improvement. That understanding of the use and application of the term is not supported by the Commission's review of appraisal literature. As noted above, a function of a quality rating within the sales comparison approach is to show whether that characteristic of a subject property and a comparable are similar or require adjustment for differences. Without application of an appropriate definition of quality, little confidence can be placed in the resulting adjustment or lack of adjustment for that rating.

The Commission has weighed evidence of actual value as presented by the County Assessor and the Taxpayer's appraiser. The only critique of actual value as determined by the County Assessor was determination that quality of the residence on the subject property was average as opposed to good. That critique by the Taxpayer is based on a unique understanding of the term quality. The opinion of actual value as expressed by the Taxpayer's appraiser is not fully supported by the information submitted in Exhibit 7 for reasons noted above. Greater weight is given to the opinion of the County Assessor.

V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.

3. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining actual value of the subject property as of the assessment date, January 1, 2007, is vacated and reversed.
2. Actual value, for the tax year 2007, of the subject property is:

Case No. 07R-001

Land value \$ 3,290.00

Improvement value \$158,970.00

Total value \$162,260.00.

3. This decision, if no appeal is timely filed, shall be certified to the Antelope County Treasurer, and the Antelope County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2007.
7. This order is effective for purposes of appeal on September 5, 2008.

Signed and Sealed. September 5, 2008.

Nancy J. Salmon, Commissioner

SEAL

Robert W. Hotz, Commissioner

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.

I concur in the result.

The Commission is an administrative agency of state government. See, *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government the Commission has only the powers and authority granted to it by statute. Id. The Commission is authorized by statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (Supp. 2007). In general the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (Supp. 2007).

Nebraska courts have held that the provisions of section 77-5016(8) of the Nebraska Statutes create a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *City of York v. York*

County Board of Equalization, 266 Neb. 297, 664 N.W.2d 445 (2003). The presumption cited in *York* has roots in the early jurisprudence of Nebraska. See, *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887). As early as 1903 Nebraska Statutes provided for review of County Board assessment decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. *Id.*

In 1959 the legislature provided a statutory standard for review by the district courts of county board of equalization, assessment decisions. 1959 Neb Laws, LB 55, §3. The statutory standard of review required the district Court to affirm the decision of the county board of equalization unless the decision was arbitrary or unreasonable or the value as established was too low. *Id.* The statutory standard of review was codified in section 77-1511 of the Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). Review of district court decisions made pursuant to section 77-1511 was de novo. *Future Motels, Inc. v. Custer County Board of Equalization*, 252 Neb. 565, 563 N.W.2d 785 (1997). The presumption functioned as a standard of review. See, e.g. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 492 (1954).

The Tax Equalization and Review Commission was created in 1995. 1995 Neb. Laws, LB 490 §153. Section 77-1511 of the Nebraska Statutes was made applicable to review of county board of equalization assessment decisions by the Commission. *Id.* In 2001 section 77-1511 of Nebraska Statutes was repealed. 2001 Neb. Laws, LB 465, §12. After repeal of section 77-1511 the standard for review to be applied by the Commission in most appeals was stated in section 77-5016 of the Nebraska Statutes. Section 77-5016 requires a finding that the decision being reviewed was unreasonable or arbitrary. The basis for that determination is the evidence

presented to the Commission in a new record. See, Neb. Rev. Stat. §77-5016 (Cum. Supp. 2006). Commission decisions are reviewed for error on the record. See, Neb. Rev. Stat. 77-5019(5) (Cum. Supp. 2006). The statutory basis for Commission review and the review of its decisions is analogous to district courts review of decisions made by administrative agencies. The basis for district court review of decisions made by administrative agencies is de novo on the record. *Tyson Fresh Meats v. State*, 270 Neb. 535, 704 N.W.2d 788 (2005). The decisions of the district court examining the administrative decision are reviewed for error on the record. *Thorson v. Nebraska Dept. of Health & Human Servs.*, 274 Neb. 322, 740 N.W.2d 27 (2007). The similarities are enough to suggest that the framework for review applied to district court decisions could be made applicable to decisions of the Commission.

Many appeals of decisions made pursuant to section 77-1511 were decided without reference to the statutory standard of review applicable to the district courts. See, e.g. *Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). As noted however review was de novo and the reviewing court was not bound by the standard of review imposed on district court. *Loskill v. Board of Equalization of Adams County*, 186 Neb. 707, 185 N.W.2d 852 (1971). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the Nebraska Supreme Court acknowledged that two standards of review existed for the district courts; one statutory, and the other judicial stated as a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence. No attempt was made by the *Hastings* Court to reconcile the two standards of review that were applicable to the district courts.

The possible results from application of the presumption and the statutory standard of review by the Commission are: (1) the presumption is not overcome and the statutory standard is not overcome; (2) the presumption is overcome and the statutory standard is not overcome; (3) the presumption is not overcome and the statutory standard is overcome; (4) and finally the presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. If the presumption is overcome the statutory standard remains. See, *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The second possibility does not therefore allow a grant of relief even though the presumption is overcome. The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, one remaining after the other has been met. See. *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The burden of proof to overcome the presumption is competent evidence. *City of York*, Supra. Clear and convincing evidence is required to show that a county board of equalization's decision was unreasonable or arbitrary. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the county board of equalization failed to perform its duties or act upon sufficient competent evidence is not always evidence that the county board of equalization acted unreasonably or arbitrarily because the statutory standard of review remains even if the presumption is overcome. *City of York*, Supra. Clear and convincing evidence that a county board of equalization's determination, action, order, or decision was unreasonable or arbitrary, as those terms have been defined, may however overcome the presumption that the county board of equalization faithfully discharged its duties and acted on sufficient competent evidence. In any event the statutory standard has been met and

relief may be granted. Both standards of review are met in the fourth possibility and relief may be granted. Each analyses of the standards of review allowing a grant of relief requires a finding that the statutory standard has been met.

Use of the presumption as a standard of review has been criticized. See, G. Michael Fenner, About Presumptions in Civil Cases, 17 Creighton L. Rev. 307 (1984). In the view of that author the presumption should be returned to its roots as a burden of proof. *Id.* Nebraska's Supreme Court acknowledged the difficulty of using two standards of review and classified the presumption in favor of the county board of equalization as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. See, *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use of the *Gordman* analysis allows consideration of both the presumption and the statutory standard of review without the possible conflict or difficulties inherent in the application of two standards of review. The *Gordman* analysis requires the Commission to consider all of the evidence produced in order to determine whether there is clear and convincing evidence that the decision, action, order, or determination being reviewed was unreasonable or arbitrary. It is within that framework that I have analyzed the evidence.

Wm R. Wickersham, Commissioner